In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 407

ALLEN S. KRAKOVER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

One Lawrence E. Anderson, then an employee of the State of Colorado, filed a petition for a wage earner's plan under Chapter 13 of the Bankruptcy Act (11 U.S.C. 1001–1086). The plan, which was duly confirmed by the district court, provided for the payment of $60 per month from the wage earner's future earnings to the trustee, petitioner Allen S. Krakover, who would use the money to pay the wage earner's debts (Pet. App. 13). Thereafter, the wage earner became an employee of the Denver Mint, an agency of the United States Treasury Department, and, on motion of petitioner, the referee in bankruptcy issued an *ex parte* order directing the Denver Mint to pay

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petitioner $30 semi-monthly out of the wage earner's future earnings. The purported authority for issuance of this order was Section 658(2) of the Bankruptcy Act (11 U.S.C. 1058(2)).[1]

Subsequently, the government moved to have the referee's order vacated on the ground that Section 658(2) did not effect a waiver of sovereign immunity from coercive legal process, and that the order was an impermissible attempt to garnish the salary of a federal employee. The referee denied the motion (Pet. App. 13–16), and the district court affirmed the denial (Pet. App. 11–12). On appeal by the government, however, the court of appeals reversed (Pet. App. 7–10).

The Tenth Circuit concluded that the referee's order could not be enforced against a governmental agency because Congress had not waived the government's immunity from suit or other coercive legal process (Pet. App. 9–10). It declined to construe the "general language" of Section 658(2) as constituting such a waiver, and rejected as "unconvincing" petitioner's argument "that the order does not violate the principle of sovereign immunity" (Pet. App. 9). That rejection took into account the fact that the order would affect the operation of the government by interfering with the distribution of its payrolls (*ibid.*). See, *e.g.*, *Dugan* v. *Rank*, 372 U.S. 609; *Larson* v. *Domestic & Foreign Corp.*, 337 U.S. 682. After

[1] That section provides, in pertinent part, that a district court "may issue such orders as may be requisite to effectuate the provisions of the plan, including orders directed to any employer of the debtor" (see Pet. 2; Pet. App. 8–9, 13).

pointing out that "the controlling factor is the fact of impact on the government rather that the extent of the impact" (Pet. App. 9), the court of appeals further noted that the referee's order, which required the government to pay petitioner money in the hands of its disbursing agent, was contrary to *Buchanan* v. *Alexander,* 4 How. 20. In that case, the Court held that money already due for wages in the hands of a government disbursing agency could not be attached (Pet. App. 9).[2]

Review by this Court is plainly not warranted. Congress did not intend, by Section 658(2), to waive the government's immunity from suit or other coercive legal process. Nothing in the section's legislative history even remotely suggests that Congress intended to include the federal government within the general terms "any employer". See *United States* v. *United Mine Workers,* 330 U.S. 258. This is hardly surprising since, unlike the wages of other debtors, the wages of federal employees are not subject to garnishment. *Buchanan* v. *Alexander, supra.* Thus, there was no reason for Congress to alter the well-established rule that the Bankruptcy Act does not

[2] The court below also pointed out that its holding did not deprive federal employees of the benefits of Chapter 13 of the Bankruptcy Act, since the compulsion required to effect payment to the trustee of part of the wages as earned could still be exercised against the debtor himself, by an appropriate order to endorse and turn over his pay checks (Pet. App. 10). Such an order would protect the trustee and creditors and would not violate the government's sovereign immunity.

affect the government except as expressly provided. *Lewis* v. *United States,* 92 U.S. 618, 622.[3]

Petitioner's contention that the debtor's voluntary assignment of his future wages does not violate the government's immunity (Pet. 5), stands on no better footing. The immunity of a governmental agency from garnishment of an employee's wages "is not a question of any right of personal exemption on the part of the [employee]but of the sovereign immunity of the United States from suits to which it has not consented." *Applegate* v. *Applegate,* 39 F. Supp 887, 890 (E.D. Va.). This immunity is designed to avoid "interference with official duties by compulsory participation in private litigation." *Bishop* v. *Atlantic Smokeless Coal Co.,* 88 F. Supp. 27, 30 (S.D. W. Va.). The referee's order here amounted to an attachment and garnishment against the United States, and it is thus irrelevant that it was issued in a proceeding where the debtor was a voluntary participant. As the rule of *Buchanan* v. *Alexander, supra,* protects a governmental interest, it seems clear that that interest must be protected from infringements resulting from

[3] Indeed, the language of Section 658(2) itself indicates that it does not apply to the government, because a governmental agency is not an employer that can be subjected to proceedings "for the enforcement of judgments." In other words, judgments cannot be enforced against the Treasury Department by execution. See *Federal Housing Administration* v. *Burr*, 309 U.S. 242, 250.

voluntary assignments as well as from involuntary garnishments and attachments.[4]

For the reasons stated, the petition should be denied.

Respectfully submitted,

THURGOOD MARSHALL,
Solicitor General.

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[4] Petitioner's reliance on *Kolb* v. *Berlin*, 356 F. 2d 269 (C.A. 5), and *Segal* v. *Rochelle*, 382 U.S. 375 (Pet. 5), is misplaced. Those cases simply hold that transfers which are not valid against the government may be valid as between private parties (see Pet. App. 10). Neither of them dealt with the question of assignment of future wage claims. Indeed, petitioner concedes (Pet. 3) that there are no reported decisions on the instant question, and the court of appeals noted that "[t]he question presented is one of first impression for federal appellate courts" (Pet. App. 8). Should a conflict among circuits develop in the future, that would seem a more appropriate time for this Court to consider the question.

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